

SENATE BILL 1245

By Tracy

AN ACT to amend Tennessee Code Annotated, Title 4,
Chapter 3, Part 23 and Section 12-8-101, relative
to the sale and production of stone products and
hot mix asphalt by governmental entities.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 12-8-101(a), is amended by deleting such subsection in its entirety and by substituting instead the following:

(a) Notwithstanding any other provision of law to the contrary, local governments may, individual or jointly, own or operate a facility for the manufacture or production of hot mix asphalt, in accordance with the restrictions and limitations provided for in this section, including but not limited to, the requirements that all such facilities shall comply with all:

(1) State and federal regulations that apply to such facilities that are owned or operated by private industry, including but not limited to, § 47-26-803, and those regulations imposed by the department of transportation, department of environment and conservation, occupational safety and health administration, federal bureau of alcohol, tobacco and firearms, federal mine safety and health administration, and federal occupational safety and health administration; and

(2) Local zoning and permitting restrictions and regulations.

SECTION 2. Tennessee Code Annotated, Section 12-8-101(b), is amended by deleting such subsection in its entirety and by substituting instead the following:

(b)

(1) A local government desiring to own or operate a hot mix asphalt facility shall prepare a financial feasibility study, referred to as "study" in this section, that analyzes all appropriate costs and benefits related to the operation of the plant.

(2) The study and all financial projections and forecasts included in the study by this section shall be prepared in compliance with generally accepted governmental accounting and financial reporting standards and all accounting, auditing and review pronouncements governing the issuance of forecasts and projections issued by the American Institute of Certified Public Accountants (AICPA). Financial assumptions and data used in the forecasts and projections should be reasonable based on historical or industry averages. The issuance of financial projections and forecasts shall be subject to the rules and regulations governing certified public accountants and shall include the following:

(A) Accurate production cost estimates, including debt service and depreciation on the asphalt plant and necessary ancillary equipment, and all other fixed and variable plant operating costs, including, but not limited to, capital cost of equipment and installation, land acquisition, personnel costs, employer fixed costs, materials, transportation, utility costs and all costs associated with health, environmental, safety and quality compliance standards required by local, state and federal regulations. This report shall be completed in general compliance with the comptroller of the treasury's asphalt production cost models;

(B) An estimate of the potential cost savings in materials and transportation and operational costs that may be realized by the local government operating the proposed facility, including a record of competitive bids, F.O.B. at plant, for asphalt that the local government or governments have received in recent years, including the current year, and an examination of bids received by comparable local governments;

(C) An estimated need for paving or hot mix asphalt for fifteen (15) years that demonstrates that the local government or governments would produce the

volume necessary to realize a cost savings by owning or operating an asphalt facility;

(D) Offers from suppliers of the necessary raw materials showing that those suppliers will sell materials to the local government or governments at competitive prices, and the locations of those suppliers;

(E) Estimates of whether the operation of a facility by the local government would have a significant impact on the local economy and state and local tax revenues, including sales and use tax, local option sales tax, mineral severance tax, business tax, and real and personal property tax;

(F) All lay-down costs including the initial investment and all operating costs to meet Tennessee department of transportation specifications;

(G) All costs associated with design and quality control testing of the specified asphalt product or products. Asphalt produced shall meet department of transportation specifications; and

(H) All costs necessary to comply with § 47-26-803.

SECTION 3. Tennessee Code Annotated, Section 12-8-101(c)(4), is amended by deleting such subdivision in its entirety and by substituting instead the following:

(4) If the committee determines that the feasibility study is incomplete, the committee shall indicate in writing those items which the study lacks and shall return the study to the submitting entity for modification and resubmission. If, after a second resubmission, a majority of the committee still determines that the study is incomplete, the study shall be denied. A submitting entity may resubmit another study with modification no earlier than twelve (12) months from the date of the final rejection of the last submittal.

SECTION 4. Tennessee Code Annotated, Section 12-8-101(c)(5), is amended by deleting such subdivision in its entirety and by substituting instead the following:

(5) If a majority of the feasibility oversight committee determines that the study is sufficient, the committee shall forward such determination to the governing body of the government or governments desiring to own or operate the facility within thirty (30) days after the committee meets to review the study. No county may appropriate funds for an asphalt facility unless such county has complied with this section.

SECTION 5. Tennessee Code Annotated, Section 12-8-101(d), is amended by deleting such subsection in its entirety and by substituting instead the following:

(d) After receiving the report, if approved by the financial feasibility oversight committee, the governing body shall examine the feasibility study, all supporting documentation and the determination and written comments of the oversight committee, and shall approve or deny any action to acquire an asphalt facility in a resolution or ordinance passed by a two-thirds (2/3) vote of the governing body before the local government expends any public funds for the purpose of acquiring a hot mix asphalt facility.

SECTION 6. Tennessee Code Annotated, Section 12-8-101(f), is amended by deleting such subsection in its entirety and by substituting instead the following:

(f) Any unit of local government owning or operating a facility for the manufacture or production of hot mix asphalt shall design, produce and test the asphalt mixture according to the department of transportation specifications. When using a department of transportation-specified asphalt mixture, county highway officials shall consider vital safety issues, including, but not limited to, skid resistance, pavement drop and pavement crown. For audit purposes, specification of mixture, process for laying mixture, and location of work shall be kept on file in the county highway office.

SECTION 7. This act shall take effect upon becoming a law, the public welfare requiring it.